

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANDREW H.K. WONG,

Plaintiff,

v.

NO. CIV. S-96-965 LKK/GGH

REGENTS OF THE UNIVERSITY
OF CALIFORNIA,

Defendant.

STATUS (PRETRIAL SCHEDULING) CONFERENCE

READ THIS ORDER CAREFULLY. IT CONTAINS IMPORTANT DATES WHICH THE COURT WILL STRICTLY ENFORCE AND WITH WHICH ALL COUNSEL AND PARTIES MUST COMPLY. A FAILURE TO COMPLY WITH THE TERMS OF THIS ORDER MAY RESULT IN THE IMPOSITION OF MONETARY AND ALL OTHER SANCTIONS WITHIN THE POWER OF THE COURT, INCLUDING DISMISSAL OR AN ORDER OF JUDGMENT.

Pursuant to court order, a Status (Pretrial Scheduling) Conference was held in Chambers on March 13, 2000. HUNTER PYLE appeared as counsel for plaintiff; MICHAEL BRUNO appeared as counsel for the Regents. Except as modified herein, all previous

1 Status Orders are incorporated herein by reference. After hearing,
2 the court makes the following findings and orders:

3 **MOTION HEARING SCHEDULES**

4 All law and motion except as to discovery is left open, save
5 and except that it shall be conducted so as to be completed by
6 October 13, 2000. The word "completed" in this context means that
7 all law and motion matters must be **heard** by the above date.
8 Because this date is not necessarily a date previously set aside
9 for law and motion hearings, it is incumbent upon counsel to
10 contact this court's courtroom deputy, Sharon Jaggard, at (916)
11 930-4133, sufficiently in advance so as to ascertain the dates upon
12 which law and motion will be heard and to properly notice its
13 motion for hearing before that date. Counsel are cautioned to
14 refer to Local Rule 78-230 regarding the requirements for noticing
15 such motions on the court's regularly scheduled law and motion
16 calendar. **Opposition or statement of non-opposition to all motions**
17 **shall be filed not later than 4:30 p.m. fourteen (14) days**
18 **preceding the hearing date, or by proof of service by mail not less**
19 **than seventeen (17) days preceding the hearing date.** This
20 paragraph does not preclude motions for continuances, temporary
21 restraining orders or other emergency applications, and is subject
22 to any special scheduling set forth in the "MISCELLANEOUS
23 PROVISIONS" paragraph below.

24 The parties should keep in mind that the purpose of law and
25 motion is to narrow and refine the legal issues raised by the case,
26 and to dispose of by pretrial motion those issues that are

1 susceptible to resolution without trial. To accomplish that
2 purpose, the parties need to identify and fully research the issues
3 presented by the case, and then examine those issues in light of
4 the evidence gleaned through discovery. If it appears to counsel
5 after examining the legal issues and facts that an issue can be
6 resolved by pretrial motion, counsel are to file the appropriate
7 motion by the law and motion cutoff set forth supra.

8 ALL PURELY LEGAL ISSUES ARE TO BE RESOLVED BY TIMELY PRETRIAL
9 MOTION AND A FAILURE TO MAKE SUCH A MOTION WILL ORDINARILY BE
10 VIEWED AS A WAIVER AT THE TIME OF PRETRIAL. COUNSEL ARE CAUTIONED
11 THAT IF ANY LEGAL ISSUE THAT SHOULD HAVE BEEN TENDERED TO THE COURT
12 BY PRETRIAL MOTION MUST BE RESOLVED BY THE COURT AFTER LAW AND
13 MOTION CUTOFF, FOR INSTANCE WHERE THE ISSUE IS JURISDICTION,
14 SUBSTANTIAL SANCTIONS WILL BE LEVIED AGAINST COUNSEL WHO FAILED TO
15 TIMELY FILE AN APPROPRIATE MOTION.

16 Counsel are further reminded that motions in limine are
17 procedural devices designed to address the admissibility of
18 evidence. COUNSEL ARE CAUTIONED THAT THE COURT WILL LOOK WITH
19 DISFAVOR UPON SUBSTANTIVE MOTIONS PRESENTED IN THE GUISE OF MOTIONS
20 IN LIMINE AT THE TIME OF TRIAL.

21 DISCOVERY

22 All discovery is left open, save and except that it shall be
23 so conducted as to be completed by August 13, 2000. The word
24 "completed" means that all discovery shall have been conducted so
25 that all depositions have been taken and any disputes relative to
26 discovery shall have been resolved by appropriate order if

1 necessary and, where discovery has been ordered, the order has been
2 complied with. Motions to compel discovery must be noticed on the
3 magistrate judge's calendar in accordance with the local rules of
4 this court and so that such motions will be heard not later than
5 July 13, 2000. In this regard, all counsel are to designate in
6 writing and file with the court and serve upon all other parties
7 the names of all experts that they propose to tender at trial not
8 later than forty-five (45) days before the close of discovery
9 herein established. All experts so designated are to be fully
10 prepared to render an informed opinion at the time of designation
11 so that they may fully participate in any deposition taken by the
12 opposing party. Experts will not be permitted to testify at the
13 trial as to any information gathered or evaluated, or opinion
14 formed, after deposition taken subsequent to designation.

15 An expert witness not appearing on said lists will not be
16 permitted to testify unless the party offering the witness
17 demonstrates: (a) that the necessity of the witness could not have
18 been reasonably anticipated at the time the lists were exchanged;
19 (b) the court and opposing counsel were promptly notified upon
20 discovery of the witness; and (c) that the witness was promptly
21 proffered for deposition.

22 **MID-LITIGATION STATEMENTS**

23 Not later than fourteen (14) days prior to the close of
24 discovery, all parties shall file with the court and serve on all
25 other parties a brief statement summarizing all law and motion
26 practice heard by the court as of the date of the filing of the

1 statement, whether the court has disposed of the motion at the time
2 the statement is filed and served, and the likelihood that any
3 further motions will be noticed prior to the close of law and
4 motion. The filing of this statement shall not relieve the parties
5 or counsel of their obligation to timely notice all appropriate
6 motions as set forth above.

7 **FINAL PRETRIAL CONFERENCE**

8 The Final Pretrial Conference is **SET** for February 12, 2001,
9 at 3:30 p.m. Counsel are cautioned that counsel appearing for
10 Pretrial will in fact try the matter.

11 Counsel for all parties are to be fully prepared for trial at
12 the time of the Pretrial Conference, with no matters remaining to
13 be accomplished except production of witnesses for oral testimony.
14 Counsel are referred to Local Rules 40-280 and 16-281 relating to
15 the contents of and time for filing Pretrial Statements. In
16 addition to those subjects listed in Local Rule 16-281(b), the
17 parties are to provide the court with a plain, concise statement
18 which identifies every non-discovery motion tendered to the court,
19 and its resolution. A FAILURE TO COMPLY WITH LOCAL RULES 40-280
20 AND 16-281 WILL BE GROUNDS FOR SANCTIONS.

21 In addition to the provisions of Local Rule 16-281, which
22 contemplate the filing of separate Pretrial Statements by
23 plaintiffs and defendants, the parties are to prepare a JOINT
24 STATEMENT with respect to the undisputed facts and disputed factual
25 issues of the case. See Local Rule 16-281(b)(3), (4), and (6).
26 The undisputed facts and disputed factual issues are to be set

1 forth in two separate sections. In each section, the parties
2 should identify first the general facts relevant to all causes of
3 action. After identifying the general facts, the parties should
4 then identify those facts which are relevant to each separate cause
5 of action. In this regard, the parties are to number each
6 individual fact or factual issue. Where the parties are unable to
7 agree as to what factual issues are properly before the court for
8 trial, they should nevertheless list in the section on "DISPUTED
9 FACTUAL ISSUES" all issues asserted by any of the parties and
10 explain by parenthetical the controversy concerning each issue.
11 The parties should keep in mind that, in general, each fact should
12 relate or correspond to an element of the relevant cause of action.
13 Notwithstanding the provisions of Local Rule 16-281, the Joint
14 Statement of Undisputed Facts and Disputed Factual Issues is to be
15 filed with the court concurrently with the filing of plaintiff's
16 Pretrial Statement. If the case is tried to a jury, the undisputed
17 facts will be read to the jury.

18 Pursuant to Local Rule 16-281(b)(10) and (11), the parties are
19 required to provide in their Pretrial Statements a list of
20 witnesses and exhibits that they propose to proffer at trial, no
21 matter for what purpose. These lists shall not be contained in the
22 Pretrial Statement itself, but shall be attached as separate
23 documents to be used as addenda to the Final Pretrial Order.
24 Plaintiff's exhibits shall be listed numerically; defendant's
25 exhibits shall be listed alphabetically. In the event that the
26 alphabet is exhausted, defendant's exhibits shall be marked "2A-2Z,

1 3A-3Z, etc." The Pretrial Order will contain a stringent standard
2 for the proffering of witnesses and exhibits at trial not listed
3 in the Pretrial Order. Counsel are cautioned that the standard
4 will be strictly applied. On the other hand, the listing of
5 exhibits or witnesses which counsel do not intend to call or use
6 will be viewed as an abuse of the court's processes.

7 Pursuant to Local Rule 16-281(b)(12), a party is required to
8 provide a list of all answers to interrogatories and responses to
9 requests for admission that the party expects to offer at trial.
10 This list should include only those documents or portions thereof
11 which the party expects to offer in its case-in-chief. Unless
12 otherwise barred by a rule of evidence or order of this court, the
13 parties remain free to tender appropriate discovery documents
14 during trial for such purposes as, but not limited to, impeachment
15 or memory refreshment.

16 Pursuant to Local Rule 16-281(b)(8), the parties' Pretrial
17 Statements shall contain a "statement of legal theory, etc." Each
18 party shall commence this section by specifying as to each claim
19 whether federal or state law governs, and if state law, the state
20 whose law is applicable.

21 Counsel are also reminded that, pursuant to Fed. R. Civ. P.
22 16, it will be their duty at the Pretrial Conference to aid the
23 court in (a) formulation and simplification of issues and the
24 elimination of frivolous claims or defenses; (b) settling of facts
25 which should be properly admitted; and (c) the avoidance of
26 unnecessary proof and cumulative evidence. Counsel must prepare

1 their Pretrial Statements, and participate in good faith at the
2 Pretrial Conference, with these aims in mind. A FAILURE TO DO SO
3 MAY RESULT IN THE IMPOSITION of SANCTIONS which may include
4 monetary sanctions, orders precluding proof, eliminations of claims
5 or defenses, or such other sanctions as the court deems
6 appropriate.

7 **TRIAL SETTING**

8 Trial is SET for May 15, 2001, at 10:00 a.m. Trial will be
9 by jury. The parties represent in good faith that the trial will
10 take approximately ten (10) days.

11 **SETTLEMENT CONFERENCE**

12 A Settlement Conference will be set before a judge other than
13 the trial judge at the time of the Pretrial Conference.

14 Counsel are cautioned to have a principal capable of
15 disposition present at the Settlement Conference or to be fully
16 authorized to settle the matter on any terms and at the Settlement
17 Conference.

18 **MISCELLANEOUS PROVISIONS**

19 The parties are reminded that pursuant to Fed. R. Civ. P.
20 16(b), the Status (pretrial scheduling) Order **shall not be modified**
21 **except by leave of court upon a showing of good cause.** Counsel are
22 cautioned that changes to any of the scheduled dates will
23 necessarily result in changes to all other dates. Thus, even where
24 good cause has been shown, the court will not grant a request to
25 change the discovery cutoff date without modifying the pretrial and
26 trial dates.

1 Agreement by the parties pursuant to stipulation does not
2 constitute good cause. Nor does the unavailability of witnesses
3 or counsel, except in extraordinary circumstances, constitute good
4 cause.


5 The parties are reminded of their continuing obligation to
6 supplement their statements relative to the identification of
7 parent corporations and any publicly held company that owns 10% or
8 more of the party's stock within a reasonable time of any change
9 in the information.

10 The parties are admonished that they are not to cite or refer
11 to any of the quotations inscribed in the pavers on the front plaza
12 of the United States Courthouse in any written or oral presentation
13 to the court or a jury.

14 There appear to be no other matters presently pending before
15 the court that will aid the just and expeditious disposition of
16 this matter.

17 IT IS SO ORDERED.

18 DATED: March 14, 2000.

19
20 
21 LAWRENCE K. KARLTON
22 CHIEF JUDGE EMERITUS
23 UNITED STATES DISTRICT COURT
24
25
26

United States District Court
for the
Eastern District of California
March 15, 2000

* * CERTIFICATE OF SERVICE * *

2:96-cv-00965

Wong

v.

Regents of the Univ

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on March 15, 2000, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

Dan Siegel
Siegel Yee and Jonas
499 14th Street
Suite 220
Oakland, CA 94612

SJ/LKK

Michael T Lucey
Gordon and Rees
Embarcadero Center West
275 Battery Street
Suite 2000
San Francisco, CA 94111

Jack L. Wagner, Clerk

BY:


Deputy Clerk